

18 January 1956

MEMORANDUM FOR THE RECORD

SUBJECT: Meeting with Mr. Ferguson, Deputy General Counsel, AEC

AT 1. [] and I today met Mr. Ferguson to discuss the draft of a possible submission from AEC to the Attorney-General regarding the scope of AEC authority under Sec. 145(b) of the Atomic Energy Act of 1954 with regard to Agency personnel who are cleared under our normal procedures and practices.

2. When we explained that the draft had been prepared on the assumption that AEC would themselves submit it to the Attorney-General since the question was in regard to a delineation of their powers rather than ours, Ferguson stated that they would be unable to do this since the Attorney-General had not accepted such requests in the past from them. He indicated this refusal was based on the fact that they were not defined as an Executive Department of the Government under Title 5 U.S.C. In reply to my suggestion that even though requests for opinions had been declined in the past there was always the possibility that the Attorney-General might accept a new one, he stated that he didn't feel it would be worthwhile. The contents of the draft were in general satisfactory to them provided it was prepared as a submission from this Agency rather than AEC. Ferguson did indicate that they could probably get an opinion from the Attorney-General if he was approached through the White House.

AT 3. In further discussion with Mr. Trainer (AEC Security) they were not prepared to accept our evaluation standards - or possibly even our evaluations - without further consideration. [] felt that this reservation was acceptable and we pointed out that we had indicated that "appropriate procedural details" could be agreed upon between the Agency and the Commission. By revising the language in paragraph 5 to leave room for further consideration and mutual discussion with regard to evaluation, the draft can go forward with the general content in tact. It was interesting to note that Trainer (who is not a lawyer) indicated that in his opinion they had sufficient authority under the language of their act to make appropriate determinations now without submission to the Attorney-General, the question being rather one of administrative policy. Ferguson said that he and Mitchell did not

agree, although when I queried him regarding the legislative history, he conceded that there was nothing he knew of, nor could probably be found, defining the specific limitations of the discretionary powers under Section 145(b). However, he went on to say that this authority had been utilized only in the case of specific high level individuals and in (Trainer's estimate) only about 20 instances. Ferguson had at first indicated that he didn't feel that they should go into their legal reasons regarding the limitations of Section 145(b), but he later conceded that their reservations were related to the specific designation of DOD personnel under Section 143. Further, in answer to a direct question, he stated that they would have the same reservation with regard to a class of persons rather than an entire Agency.

4. When we raised the matter of interchange of information between DOD personnel acting under Section 143 without a Que clearance and Agency personnel who had a Que clearance, he called in a man named English. Ferguson was unaware of the problem and while English thought that very likely they would be limited by the exact provisions of Section 143, he promised to investigate. We pointed out the anomaly of having both types of persons acting on a joint committee such as the JAEIC and the improbability of a Que-cleared lecturer talking before Section 143 DOD personnel at the National War College. We also described the difficulties in relation to military personnel without a Que clearance who must then obtain one upon assignment to the Agency but who lose it upon their separation from the Agency and return to the military. Ferguson stated that there was considerable trans-classification in progress regarding information on military utilization of atomic weapons under Section 142(d) of their act and that we could, of course, act with regard to international atomic energy information under Section 142(e). He suggested that this might largely eliminate the problem, and while this could prove to be the case, this should be explored with the Assistant Director, SI.

CWP:pmm
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